Supreme Court of the United States

October Term, 1961

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No. 468

In the Matter of the Application
of
STEVEN I. ENGEL, DANIEL LICHTENSTEIN, MONROE LERNER, LENORE LYONS and LAWRENCE ROTH,
Appellants,
against
WILLIAM J. VITALE, JR., PHILIP J. FREED, MARY HARTE, ANNE BIRCH and RICHARD SAUNDERS, constituting the Board of Education of Union Free School District Number Nine, New Hyde Park, New York,
Respondents,
directing them to discontinue a certain school practice
and
HENRY HOLLENBERG, ROSE LEVINE, MARTIN ABRAMS, HELEN SWANSON, WALTER F. GIBB, JANE EHLEN, RALPH B. WEBB, VIRGINIA ZIMMERMAN, VIRGINIA DAVIS, VIOLET S. COX, EVELYN KOSTER, IRENE O'ROURKE, ROSEMARIE PETELENZ, DANIEL J. REEHIL, THOMAS DELANEY and EDWARD L. MAC FARLANE,
Intervenors-Respondents

MOTION BY THE AMERICAN JEWISH COMMITTEE AND THE ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH FOR LEAVE TO FILE A JOINT BRIEF AS *AMICI CURIAE*

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SOL RABKIN and PAUL HARTMAN,
Attorneys for
Anti-Defamation League of B'nai B'rith,
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To

BUTLER, JABLOW & GELLER, Esqs.,
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GUNN, NEIER & DAIKER, Esqs.,
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117 Pennsylvania Avenue,
Brooklyn 7, New York.

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MOTION BY THE AMERICAN JEWISH COMMITTEE AND THE ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH FOR LEAVE TO FILE A JOINT BRIEF AS *AMICI CURIAE*

The undersigned, as counsel for the American Jewish Committee and the Anti-Defamation League of B'nai B'rith respectfully move this Court for leave to file a joint brief as *amici curiae*.

The American Jewish Committee, founded in 1906, was incorporated by Act of the Legislature of the State of New York in 1911. Its Charter states:

> The objects of this corporation shall be, to prevent the infraction of the civil and religious rights of Jews, in any part of the world; to render all lawful assistance and to take appropriate remedial action in the event of threatened or actual invasion or restriction of such rights, or of unfavorable discrimination with respect thereto * * *

B'nai B'rith, founded in 1843, is the oldest civic service organization of American Jews, which represents a membership of more than 350,000 men and women and their families. The Anti-Defamation League was organized in 1913 as a section of the parent organization to advance goodwill and proper understanding between Americans and translate into greater effectiveness the ideals of American democracy. It is, therefore, dedicated to the protection of freedom of religion and combatting religious discrimination.

It has been among the fundamental tenets of the organizations which seek permission to appear as *amici curiae* herein that the welfare and the security of members of minority religious groups in the United States depend upon the preservation of constitutional guarantees for all; and that an invasion of the rights of any religious group is ultimately a threat to the religious freedom of all groups and to the individual members thereof.

It was in furtherance of this interest and belief that the petitioners herein participated as *amici curiae* in a number of cases before this Court bearing on church-state issues, including *McCollum* v. *Board of Education*, 333 U. S. 203 (1948), *Gallagher* v. *Crown Kosher Super Market*, 366 U. S. 617 (1961) and *Torcaso* v. *Watkins*, 367 U. S. 486 (1961).

This case places in issue the constitutionality under the First Amendment of prayer as part of the opening exercise in the public schools of the State of New York. While the constituency of both of the *amici* includes vast numbers of people who not only believe in the existence of God, but devoutly worship Him, we believe that prayer, in our democratic society, is a matter for the home, synagogue and church, and not for the public schools. We wholeheartedly support the principle of separation of church and state for the greater independence and strength of both such institutions, as expressed in the First Amendment to the United States Constitution. Hence, we are concerned with the decision of the New York Court of Appeals upholding the constitutionality of the recitation of the Regents' prayer in the public schools of New Hyde Park.

The question presented by this case is one of great public interest. This case is more than a dispute between two private parties seeking to resolve their differences by litigation. It involves the entire community and may well establish precedent for religious practices in the public schools throughout the country. The petitioners herein believe that the views of a major segment of a minority religious group whose children use the public schools should be heard in addition to the arguments offered by the five parents who instituted this litigation.

If permission to file a brief *amici curiae* is granted, we will confine our argument, as we did in the New York Court of Appeals, to the question of why the recital of the Regents' prayer in the public schools is viewed by Jews as an establishment of religion in violation of the First Amendment. Prayer is a central feature of each of the major Western religions and has a separate and distinct meaning both with respect to form and content for the adherents of each sect and denomination. To deeply religious people, these differences go to the root and essence of their religion. While the Regents' prayer may not be

objectionable to a number of sects and denominations, it is a form of prayer devised by a secular authority and having no place in the religious doctrines to which many Jewish children subscribe.

Our brief would also argue that provision for the excuse of pupils whose parents object to their participation in the school-sponsored religious exercise, does not make the practice any less an establishment of religion.

The attorney for the appellants has consented to our submitting a brief *amici curiae* in this Court. Application was also made to the Board of Education of Union Free School District Number 9. This motion is necessary, however, because the attorneys for the intervenors-respondents have refused consent. (See Appendix A.) Thus, a group of parents who were permitted to intervene in this case solely because it presented issues of great public moment, now seek to prevent other groups, also concerned with the public issues but arguing on the other side, from presenting their views.

Respectfully submitted,

THEODORE LESKES,
Attorney for American Jewish Committee,
165 East 56th Street,
New York 22, New York.

SOL RABKIN and PAUL HARTMAN,
Attorneys for
Anti-Defamation League of B'nai B'rith,
515 Madison Avenue,
New York 22, New York.

December 27, 1961

To:

Butler, Jablow & Geller, Esqs.,
Attorneys for Appellants,
400 Madison Avenue,
New York 17, New York.

Gunn, Neier & Daiker, Esqs.,
Attorneys for Respondents,
49 Main Street,
Port Washington, New York.

Hahn, Hahn & Ford, Esqs.,
Attorneys for Intervenors-Respondents,
117 Pennsylvania Avenue,
Brooklyn 7, New York.

APPENDIX A

[LETTERHEAD OF]

HAHN, HAHN & FORD
Attorneys and Counsellors at Law
117 Pennsylvania Avenue
Brooklyn 7, N. Y.

Theodore Leskes, Esq.,
Director, Legal Division,
The American Jewish Committee,
165 East 56th Street,
New York 22, N. Y.

December 19th, 1961.

Re: Engel v. Vitale

Dear Sir:

With respect to your request of December 18th, it is our view that our duty to our clients does not permit us to grant the permission requested by the American Jewish Committee and the Anti-Defamation League of B'nai B'rith, to file a joint brief amici curiae in the above entitled matter now pending before the United States Supreme Court.

We appreciate your interest in this matter but feel our first responsibility is to our clients.

Yours very truly,

Hahn, Hahn & Ford

By: Thomas J. Ford

TJF/ias

cc: Bertram B. Daiker, Esq.
Richard Nolan, Esq.